TRADE DISPUTES PANEL, SOLOMON ISLANDS Under the Unfair Dismissal Act 1982

UD/8/89

Between:

BERENADO OMELANGA

Applicant

and:

LEVER SOLOMONS LIMITED

Respondent

Hearing at Honiara on 2 October 1990.

H Macleman

Chairman

G Kuper

Member

H Creighton

Member

For the applicant:

G Suri, Legal Officer, S I National Union of Workers.

For the respondent:

Mathias Papao, Administrative Officer.

FINDINGS

Levers employed Mr Berenado Omelanga as a coconut harvester from an unknown date in May 1988. On 19 November he was sitting by his house at Lungga when a tractor owned by the respondent company came by. It was in the charge of a driver, Daniel, who was supervising a learner, Gili. The tractor stalled. It would not start again unless "bump-started". Gili was unwilling either to attempt this maneuvre or to drive another tractor to pull the one on which he had been undergoing instruction. The applicant does not have a driving licence and driving was no part of his employment with Levers, but Daniel knew that he had learnt to drive at home in North Malaita. Daniel called Omelanga over and requested him to sit on the tractor and "bump-start" it while Daniel pulled with another tractor. Omelanga complied. As he was descending from the tractor he was seen by a staff supervisor. He was then summarily dismissed for driving a company tractor without permission.

Levers sought to justify the dismissal on the grounds that a tractor is an item of heavy, dangerous and expensive machinery which must not be misused, and such an action warranted a severe response.

The Panel accept that the respondent company was entitled to view the driving of the tractor as a matter of misconduct, and that the applicant knew, or ought to have known, that it was forbidden.

On the other hand there was no evidence that the applicant had anything but an unblemished record in the past, he caused no damage and drove only a minimal distance at the express request of the authorised driver.

The Panel members agree that his conduct merited a warning, but not dismissal. Omelanga earned around \$120 per month. He worked for Levers for only about 6 months. He has not been in formal employment since. He incurred boat fares in travelling to Honiara for the hearing. A considerable time has gone by since the dismissal, due to various difficulties faced by the Panel. We can take only a broad view of compensation in this case and, in all the circumstances, we assess the amount of \$350 as fair and reasonable.

Under s. 12(3) of the Unfair Dismissal Act 1982 and section 11 of the Trade Disputes Act 1981 the Panel has power to order parties to a complaint to contribute towards the expenses of the Panel. Such orders of contribution have increased little over the years, only in a few lengthy cases exceeding the \$75 - 100 range. A check on Government's current expenditure on maintaining the Panel reveals figures well in excess of \$400 per case. We have decided, therefore, that in an "average" case, where the financial circumstances of the party allow and there are no exceptional considerations, the amount of contribution fixed should not usually be less than \$200, which is the figure we fix in this case.

AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$350, payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982.

EXPENSES

The fixes a contribution of \$200 towards its expenses to be paid by the respondent to the Ministry of Commerce and Primary Industries within 14 days of this date.

APPEAL

- (1) There is a right of appeal to the High Court within 14 days on a question of law only: Unfair Dismissal Act 1982, s. 12; Trade Disputes Act 1981, s. 13; Trade Disputes Panel Rules 1981, r. 11; High Court (Civil Procedure) Rules 1964, 0. 30 r. 3.
- Any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court; Unfair Dismissal Act 1982, s. 7(3).

Issued to parties on 4 October 1990.

On behalf of the Panel

(Hygh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL

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